

**TESTIMONY OF DANIEL MEEK ON HB 3513:
PUNCHING LOOPHOLES IN THE OPEN MEETING LAW**

before the House Committee on Rules

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Daniel Meek
10949 S.W. 4th Avenue
Portland, OR 97219
503-293-9021
dan@meek.net

On behalf of the Oregon Progressive Party, I offer this testimony on HB 3513.

Oregon already ranks at the bottom of states in "Public Access to Information." The State Integrity Investigation (a project of the Center for Public Integrity, Public Radio International, and others) in 2012 gave Oregon an F in "Public Access to Information." See http://www.stateintegrity.org/oregon_survey_public_access_to_information.

Although the language of HB 3514 is convoluted and confusing, it appears that it would substantially weaken the Open Meetings law by limiting the prohibition on meeting "in private." Perhaps it would cause the integrity graders to lower Oregon's grade to F-.

Here is the crucial provision:

SECTION 1. ORS 192.630 is amended to read:

- (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.
- (2) **(a)** A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any **budget, fiscal or policy** matter except as otherwise provided by ORS 192.610 to 192.690.

(b) For purposes of this subsection, "deciding on or deliberating toward a decision" means the organized acts of a quorum of a governing body to discuss, work toward or achieve a final decision on a budget, fiscal or policy matter, but does not include:

(A) Communication that is wholly unrelated to the conduct of the public's business;

(B) Fact gathering activities; or

(C) On-site inspections of property or facilities at a location other than the regularly scheduled meeting room of the governing body.

These changes are convoluted, often involving double negatives, such as creating exemptions from prohibitions. HB 3513 appears, however, to weaken the Open Meetings Law in 2 significant ways:

1. It appears that the bill intends to allow a quorum of a governing body to have private meetings involving:

(A) Communication that is wholly unrelated to the conduct of the public's business;

(B) Fact gathering activities; or

(C) On-site inspections of property or facilities at a location other than the regularly scheduled meeting room of the governing body.

The bill appears to do that by exempting such topics from the definition of "deciding on or deliberating toward a decision." That means that such discussions are no longer covered by the ORS 192.630(2) prohibition on having such meetings in private.

One wonders how anyone can know whether the discussion is limited to the above 3 items, if the meeting is held in private. As noted, the bill appears to allow the quorum to meet privately for "fact gathering activities." Currently, such meetings must be held in public, pursuant to *Oregonian Publishing Co. v. Oregon State Board of Parole*, 99 OrApp 501 (1989). And fact-gathering is often the crucial stage in any government process to reach a decision. It is so crucial that decision-makers in adjudicative contexts (courts, agency contested cases) are forbidden from hearing any facts offered by anyone except in a forum open to all

parties (rule against *ex parte* contacts. I believe that the public should be entitled to hear the facts that are being presented to the public officials.

And exempting "On-site inspections of property or facilities at a location other than the regularly scheduled meeting room of the governing body" from the private meeting prohibition would allow the quorum of governing body members to discuss anything at all, as long as they were conducting an on-site inspection away from their usual meeting room. No doubt creative board members could suddenly desire to inspect some sort of property or facilities, when private deliberations were desired.

The bill is drafted in such a confusing way that I would argue that it actually does not allow private meetings for fact gathering or on-site inspections. It simply exempts those purposes from the definition of "deliberating" and so removes them from the implied permission to have private meetings under ORS 192.630(2). But that leaves applicable ORS 192.630(1) that requires all meetings to be open to the public. So HB 3514 is very confusing.

2. It appears that the bill intends to allow a quorum of a governing body to have private meetings involving any topic that is not a "budget, fiscal, or policy" matter.

None of those 3 terms (budget, fiscal, or policy) are defined in the Open Meetings Law. What is a "policy matter"? Today, meetings must be open if the body discusses "any matter except as provided by ORS 192.610 to 192.690," which are very limited exceptions for situations such as medical information, child abuse, and nuclear power plant security plans.

Again, HB 3513 is confusing, since exempting matters which are not "budget, fiscal, or policy" matters from the ORS 192.630(2) prohibition on private meetings would not exempt meetings addressing such matters from the requirement for openness in ORS 192.630(1).

3. Conclusion.

HB 3513 is convoluted and confusing. It appears to punch significant loopholes into the Open Meetings Law. The Committee should reject the creation of such loopholes and should at a minimum require that the bill be redrafted to be comprehensible to experienced attorneys.